

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MARCIA K. HAJEK, Individually )  
and as Personal Representative of the )  
Estate of Alan E. Hajek, Deceased, )  
  )  
   Plaintiff, )  4:08CV3157  
   )  
   )  
   v. )  
   )  
   )  
KUMHO TIRE CO., Inc., a foreign     )  MEMORANDUM AND ORDER  
corporation, and KUMHO TIRE         )  
U.S.A., Inc., a California corporation, )  
   )  
   Defendants. )  
   )  
\_\_\_\_\_ )

Plaintiff has objected to Judge Zwart's Memorandum and Order (filing no. [194](#)) denying Plaintiff's motion to compel discovery of trade secret information (filing no. [171](#)) regarding the KL 78 tire. This appeal has been held in abeyance pending resolution of mediation. Notice has recently been given that mediation was unsuccessful, this matter has now been set for trial and a rapid response to the appeal is required.

After careful review, I conclude that Judge Zwart clearly erred in refusing to allow discovery of the KL 78 tire documents.<sup>1</sup> In my view, Plaintiff has shown sufficient relevance and similarity (e.g., filing no. [172](#) at CM/ECF pp. 6-11) between the KL 78 tire and the KL 41 tire to allow discovery. *See, e.g., Hofer v. Mack Trucks, Inc., 981 F2d 377, 380-381 (8<sup>th</sup> Cir. 1992)* (while the standard of relevance in the

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<sup>1</sup>I do not suggest, however, that this is an easy question. Indeed, I find it a challenging one. In this regard, Judge Zwart's written opinion was very thoughtful, and nothing that I have written is intended to suggest otherwise.

context of discovery is broader than in the context of admissibility, a threshold showing of relevance—that is, a fact specific determination of the extent of the similarities or dissimilarities—must be made before a defendant is required to open wide the doors of discovery regarding other products). Moreover, I am persuaded that the information is also discoverable on the feasibility of an alternative design using a full nylon cap. Therefore,

IT IS ORDERED that:

1. The Objection (filing no. [196](#)) is sustained, Judge Zwart's Memorandum and Order (filing no. [194](#)) is set aside to the extent that it ruled on the Motion to Compel, and the Motion to Compel (filing no. [171](#)) is granted.
2. This matter is remanded to Judge Zwart for the issuance of such further and other orders as are consistent with this opinion including the extension or issuance of an appropriate protective order to cover the KL 78 tire documents.

DATED this 26<sup>th</sup> day of April, 2011.

BY THE COURT:

*Richard G. Kopf*  
United States District Judge

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